

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

Master File No. 1:00-1898 (SAS)
MDL 1358

This document pertains to:

*Commonwealth of Pennsylvania v. Exxon Mobil
Corporation, et al.*, Case No. 14-cv-06228

**DECLARATION OF LISA A. GERSON IN SUPPORT OF CERTAIN DEFENDANTS'
MOTION TO DISMISS**

LISA A. GERSON, an attorney duly licensed to practice law in the State of New York and in the United States District Court for the Southern District of New York, hereby declares pursuant to 28 U.S.C. § 1746 and under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am a member of the law firm McDermott Will & Emery LLP, counsel for defendant Exxon Mobil Corporation in the above-captioned case. I respectfully submit this Declaration in support of *Certain Defendants' Motion to Dismiss* (hereinafter "Motion"). This Declaration authenticates certain exhibits attached hereto and referenced in Defendants' *Memorandum of Law in Support of Certain Defendants' Motion to Dismiss*.

2. Attached at Exhibit 1 is a true and correct copy of the May 13, 1990 *Philadelphia Inquirer* article entitled, "Speeding up the Drive for Cleaner Gas Oil Firms are Yielding to Pressure from Laws, Consumers and Automakers to Make Fuel More Compatible with the Environment," which is quoted in paragraph 269 of the Second Amended Complaint ("SAC").

3. Attached at Exhibit 2 is a true and correct copy of the April 12, 1990 *New York Times* article entitled, "Shell Offers a New Gasoline in 10 Cities to Aid Air Quality," which is quoted in paragraph 270 of the SAC.

4. Attached at Exhibit 3 is a true and correct copy of the April 23, 1990 *Oil & Gas Journal* article entitled, "New Shell Gasoline Blended to Reduce Air Emissions," which is quoted in paragraph 270 of the SAC.

5. The attached copies were made at my direction on or about January 8, 2016.


Dated: January 8, 2016



LISA A. GERSON

EXHIBIT 1

Speeding Up The Drive For Cleaner Gas Oil Firms Are Yielding To Pressure From Laws, Consumers And Automakers To Make Fuel More Compatible With The Environment.

 articles.philly.com

By Mark Jaffe, Inquirer Staff Writer

By Mark Jaffe, Inquirer Staff Writer

Posted: May 13, 1990

After years of efforts to reduce the nation's air pollution by making automobiles cleaner and more efficient, it appears that the 1990s will be the decade not so much of cleaner cars but of cleaner gasoline.

Seven oil companies - Arco, Conoco, Diamond Shamrock, Exxon, Marathon, Phillips and Shell - are selling or have announced plans to sell cleaner-burning gasolines.

Reductions in pollution from the "reformulated" fuels could be substantial.

"All in all, you can lower emissions 20 to 50 percent" in a car using cleaner gasoline, said Dexter Sutterfield, director of fuels development at the National Institute for Petroleum and Energy Research in Bartlesville, Okla.

"I'll be surprised if other companies don't follow," he added.

Other companies may have little choice. Pushed by new Clean Air legislation, consumer demands, pressure from the auto industry and new competing fuels, such as methanol and natural gas, oil companies may have to clean up gasoline just to keep it competitive.

"There is no doubt about it," said Clayton Adams, a spokesman for Conoco, "the future is in gasolines, in fuels that are more environmentally compatible."

Eleven oil companies and the three major U.S. manufacturers of cars have joined in a \$11.5 million series of tests on various types of gasolines.

"We all believed, in both industries, this (test program) was a watershed in what would be done with fuels and vehicles," said Keith McHenry, a senior vice president with Amoco Oil and co-chairman of the joint study.

One of the biggest prods to the oil industry is President Bush's support of methanol as a cleaner alternative to gasoline in urban areas with serious pollution problems. The oil industry has vigorously opposed the President's idea.

"Reformulated gasoline is the result of that pressure," said Charles Gray, director of the Environmental Protection Agency's emission-control technology division in Ann Arbor, Mich.

"The industry has typically stonewalled, but, faced with the possibility that vehicle manufacturers were looking at different types of fuels, they had, as one oil executive put it, 'an intellectual breakthrough,' " Gray said.

"The petroleum industry doesn't want the vehicle manufacturers to have the option of choosing petroleum alternatives," Gray said.

Reformulated gasolines will cost somewhere between two cents and a dime more per gallon, a differential that oil-industry executives used to think would price them out of the market.

"But we came to the conclusion that the customer now . . . really wanted an environmentally enhanced fuel," said Steven Miller, a Shell vice president.

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For 20 years, regulatory efforts have focused on cutting automobile exhaust gases - the nation's largest source of air pollution. In that time, tailpipe pollutants have been reduced an average of 90 percent.

That was done by improving engine performance and adding pollution-control equipment, such as catalytic converters and charcoal filters.

Nevertheless, more than 150 million Americans live in areas where the air is so smoggy, so dirty that it fails to meet the nation's Clean Air standards.

Proposed amendments to the federal Clean Air Act now before Congress would require auto manufacturers to further cut tailpipe emissions, reducing hydrocarbons by 22 percent and nitrogen oxide by 60 percent.

Nevertheless, experts doubt that those proposals alone would make much of a dent in the nation's air pollution.

So, now the federal government and the auto industry have turned toward improving the fuel that goes into the auto. "Fuel is now probably the dominant element in the emissions of a vehicle," Gray said.

In a speech to an American Petroleum Institute forum last month, Joseph Callucci, a General Motors vice president, said, "Like it or not, the oil industry must be a partner in reducing vehicle emissions."

If the auto industry turns to alternative fuels, "such as methanol, natural gas and electricity," to power cars, Callucci warned, it would be "very disruptive to the petroleum industry with its major investments in crude oil and refineries."

If warnings from the auto industry and the EPA don't do the trick, Congress is prepared to order clean gasoline by 1992, under pending Clean Air legislation.

The industry's response has been reformulated gasolines, which so far have relied largely on using the additive methyl tertiary butyl ether (MTBE).

Burning gasoline creates three principal types of pollutants - carbon monoxide, nitrogen oxides and hydrocarbons, which turn into smog. Additional hydrocarbon pollution comes from the fumes that evaporate from the gas tank and engine block.

By using MTBE, gasoline manufacturers can deal with several of the pollutants in one swipe.

Currently, refiners add butane, a volatile gas, to boost octane to meet engine-performance requirements.

That tends, however, to create more gasoline fumes. MTBE also boosts octane but lowers the volatility of the fuel, which reduces fumes.

Because it adds oxygen to the fuel, MTBE also enables the gasoline to burn more cleanly, reducing the carbon monoxide, nitrogen oxides and unburned hydrocarbons coming out of the tailpipe.

To further limit pollutants, refiners are changing their process to remove some of the naturally occurring olefins, which contribute to smog, and aromatics, which contain cancer-causing chemicals.

That isn't as easy as changing octane additives and may require large capital investments if the entire industry has to switch to producing clean gasolines, according to oil-company executives.

"The real challenge is to get into the regular unleaded (gasoline market). . . . That's 60 percent of the market," said Al Greenstein, a spokesman for the Arco Oil Co.

"Because of the volumes required to meet demand, there will have to be major retrofitting (of refineries) and major costs," Greenstein said.

MTBE has some drawbacks. First, production of the chemical, a combination of methanol and butane, is limited and is, consequently, expensive.

Shell's Miller said it cost his company about \$1 a gallon to purchase MTBE. About 5.5 percent of every gallon of Shell's reformulated gasoline, SU20000E, consists of MTBE, and that boosts total production costs a few cents per gallon.

There are other additives, such as ethyl tertiary butyl ether, which is made from corn. But ETBE is even more expensive than MTBE.

The auto industry is also experimenting with blends of gasoline and methanol. Those fuels may also dramatically reduce tailpipe emissions, according to the EPA.

Because of the limited availability of MTBE and the costs of retooling refineries, the clean gasolines are being sold in just a handful of areas across the country and in a limited number of grades. For example, in Colorado, Conoco is selling a substitute for leaded gasoline that has MTBE, fewer aromatics and no lead.

It costs the company one or two cents more a gallon to produce the substitute, according to Conoco's Adams, but the pump price has been competitive. "We haven't noticed any change in our sales," Adams said.

Shell is selling a premium gasoline in urban areas with air-pollution problems, including South Jersey and Delaware. Shell has no stations in Southeastern Pennsylvania.

So far, Exxon has announced the most ambitious plan to market reformulated gasoline, targeting 40 markets in 21 Gulf and East Coast states, including New Jersey, Pennsylvania and New York, by this summer.

If the Senate version of the Clean Air Act, now pending in Congress, were to pass, however, the clean gasolines now being marketed probably would not be clean enough.

The Senate bill would require a gasoline with more oxygen, thus more MTBE, and less benzene and fewer aromatics than many of the existing reformulated gasolines.

That, in large part, is why the oil and auto industries joined forces to test 18 blends of gasoline and methanol fuels in GM, Chrysler and Ford automobiles.

The tests are under way in Michigan at Ford's Dearborn proving ground and GM's Milford laboratory. Cars are being run on dynamometers - treadmills for automobiles - and the exhaust gas is being collected in bags.

In other tests, cars are sitting in large plastic enclosures with heating pads on their fuel tanks and engines to simulate the conditions that create gas fumes.

All the emissions are being chemically analyzed in exhaustive detail. "This is the most comprehensive set of tests of this kind ever conducted," said Jack Benson, manager of the GM test program.

Oil and auto executives express wariness about Congress' efforts to mandate clean gasoline and say they hope that the tests will temper those regulations.

"We would like these changes to be made, if they are made, based on what is the most cost-effective way to clean up the air," said Amoco's McHenry.

But, lurking beyond reformulated gasolines are a host of alternative fuels, which EPA officials contend burn even more cleanly than clean gasoline. They include methanol, natural gas and electricity.

The auto industry is already experimenting with those new fuels. For example, GM is planning to market an electric car called the Impact, and Ford is developing a model that can run on either methanol or gasoline.

California, which has been at the forefront of pollution-control measures, primarily because it has the nation's worst air pollution, is already preparing to mandate clean gasolines by 1993.

But the effort will not stop there. The California Air Resources Board is developing regulations to require the phasing in of "ultra-clean cars using ultra-clean fuels," such as methanol or natural gas, starting in 1994, according to William Sesa, a board spokesman.

"In the future," said the EPA's Gray, "I don't think there will be just one fuel anymore . . . just gasoline."

That, however, is not going to daunt the oil industry. "Let me assure you that if methanol turns out to be the fuel of the future, the oil companies will be selling methanol," McHenry said. "We are in the fuel business."

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EXHIBIT 2

Shell Offers a New Gasoline In 10 Cities to Aid Air Quality

www.nytimes.com

By JOHN HOLUSHA

By JOHN HOLUSHA

Published: April 12, 1990

The Shell Oil Company announced yesterday that it had introduced a reformulated gasoline to reduce tailpipe and evaporation emissions from automobiles in 10 cities, including New York, where air quality is a problem.

Shell thus becomes the latest oil company, after ARCO, Conoco, Marathon, Sun and Diamond Shamrock to alter the composition of its gasoline to help meet emissions standards in areas with dirty air.

The oil industry generally is advocating the use of these newer, gasoline-based fuels, rather than non-gasoline alternates like methanol, as a means of improving air quality. The Bush Administration's proposed Clean Air Act called for alternative fuels in highly polluted areas.

The new gasoline, designated SU 2000E, substitutes for the company's SU 2000 unleaded premium brand. Shell officials said the new gasoline, which became available to consumers yesterday, cost about two cents a gallon more than SU 2000 to produce, but said market forces would determine prices at the pump. The new fuel has less butane, which will help reduce the vapor pressure of the fuel and cut evaporative emissions, particularly in hot summer months. The fuel will have a vapor pressure ranging from 8 to 8.5 pounds a square inch, which is below the upper limits of 9 to 10.5 pounds a square inch in different metropolitan areas.

Shell's president, Frank H. Richardson, described the new gasoline blend as "an important step in the right direction" for cleaner air.

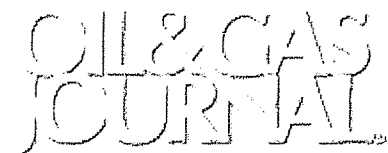
The Shell gasoline can be used in almost all cars, whether or not they are equipped with a catalytic converter. EC-1 was formulated for older cars and trucks that do not have the converters.

In addition to New York, the new Shell gasoline will be available in Hartford, Chicago, Houston, Los Angeles, greater Philadelphia, Baltimore, Milwaukee, San Diego and Washington.

EXHIBIT 3

1/8/2016

NEW SHELL GASOLINE BLENDED TO REDUCE AIR EMISSIONS - Oil & Gas Journal



NEW SHELL GASOLINE BLENDED TO REDUCE AIR EMISSIONS

04/23/1990

Shell Refining & Marketing Co. has changed the blend of its premium grade gasoline in 10 U.S. metropolitan regions.

It's part of industry's first large scale effort to market a summertime product that reduces air emissions and can be used in all automobiles.

Shell's product, SU 2000E, reduces hydrocarbon vapor and carbon monoxide emissions by replacing the butane content with methyl tertiary butyl ether (MTBE). Shell might later expand the conversion system-wide, depending on customer acceptance.

Steven L. Miller, president of Shell R&M, said premium grade gasoline was chosen for the reformulation because it can be used in the entire automobile fleet.

The regions where the new blend is sold are Los Angeles, New York City, Chicago, Houston, Milwaukee, Baltimore, Philadelphia, San Diego, Hartford, and Washington, D.C. It currently is available only at Shell owned stations.

Shell earlier this year began a methanol/gasoline fuel test program in California (OGJ, Feb. 12, p. 22).

1/8/2016

NEW SHELL GASOLINE BLENDED TO REDUCE AIR EMISSIONS - Oil & Gas Journal

SU 2000E'S BLEND

Miller said SU 2000E's Reid vapor pressure (Rvp) will vary depending on the market area, but it will be at least 1/2-2 psi Rvp below the legal limit. The summertime Rvp, which meets most of California Air Resources Board's proposed 1992 standards, will range from 8 psi to 8.5 psi, depending on area.

Miller said SU 2000E will contain at least 5.5 vol % MTBE and the same octane number of 92-93 (R+M)/2 and proprietary detergent additive as SU 2000.

Shell figures summertime hydrocarbons and CO emissions will decline 82.3 tons/day in the 10 metropolitan regions, assuming current customers continue to buy Shell's premium unleaded gasoline. Nitrogen oxides emissions, on the other hand, will grow 1.6 tons/day because of the higher oxygen content of the blend. Aromatics and olefin levels of the gasoline were not changed.

Shell hired Systems Application Inc., San Rafael, Calif., to perform modeling studies on the new product. The studies showed that total emissions are reduced by 80 tons/day - hydrocarbons down 16 tons/day, CO down 66 tons/day, and NOx up less than 2 tons/day.

The model, which takes into account fleet characteristics, fuel volatility, and atmospheric conditions unique to each area, assumes the sales volume of SU 2000E is the same as current sales to Shell's premium gasoline customers.

In Houston and Los Angeles, where the SU 2000E vapor pressure is 1 psi below the legal standard, there is a 10% reduction in vehicle hydrocarbon emissions.

SU 2000E is produced in Shell's refineries at Norco, La., Deer Park, Tex., Wood River, Ill., and Wilmington, Calif., where modifications were mostly limited to tankage, storage, blending operations, and distribution.

Shell has no MTBE production capability. Miller said the company continues to study the economics of building capacity but currently buys its MTBE. Butane backed out of the blend will be used as refinery fuel and petrochemical feedstock.

REASON FOR CHANGE

Shell hopes to gain market by offering the first product for all automobiles that reduces some

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NEW SHELL GASOLINE BLENDED TO REDUCE AIR EMISSIONS - Oil & Gas Journal

air emissions.

Shell Oil Co. Pres. Frank H. Richardson said, "This new gasoline reflects Shell's commitment to make environmental considerations a priority in development of our new products and processes.

"We do not view SU 2000E as a total solution to our nation's air quality problems. We do believe, however, it is an important step in the right direction."

Although the new product costs 2cts/gal more to produce, Richardson said, it will be priced competitively in the market.

Premium grade unleaded gasolines generally provide refiners/marketers a higher margin than midgrade and regular grade gasolines.

Nine of the 10 regions where the product is sold were identified by President Bush as having the most severe ground level air quality problems in the U.S. The exception is Washington, D.C.

SU 2000E sales in the 10 markets are projected to be more than 3.5 million gal/day, which represents 35-40% of Shell's total premium gasoline sales nationwide and about 13% of Shell's total gasoline sales.

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